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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

Claims Under the Federal Tort Claims Act

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) is issuing a final rule amending its Rules and Regulations concerning administrative claims made pursuant to the Federal Tort Claims Act (FTCA). The rule reflects structural changes within the NLRB that impact the NLRB's processing of claims, the current address for submission of claims to the NLRB, the impact of a claimant's submission of an amended claim, and the effect on a claimant of the NLRB's payment of a claim.

DATES: The effective date is [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gary Shinnars, Executive Secretary, 1015 Half Street SE, Washington, DC 20570. Telephone: (202) 273-1067.

SUPPLEMENTARY INFORMATION: These amendments update the NLRB's regulations governing the submission and processing of administrative claims under the FTCA. Because of the scope of these amendments, the NLRB is replacing subpart D in its entirety.

The amendments include: (i) in paragraph (b), directing claims to be made to the Associate General Counsel for the Division of Legal Counsel, and directing that claims be submitted to the NLRB's current headquarters address available on its website; (ii) in paragraph (c), providing that a claim may be amended at any time prior to final action by the NLRB and that the NLRB shall have six months from the amendment to make a final disposition; (iii) in paragraph (d), providing that the Associate General Counsel for the Division of Legal Counsel has authority to determine submitted claims; (iv) in paragraph (e), omitting that legal review of certain claims is to be performed by the General Counsel or his or her designee; (v) in paragraph (f), providing that awards up to \$2,500 will be paid by the Chief Financial Officer; and (vi) in paragraph (g), providing that acceptance of payment constitutes a release of claims against the United States, the NLRB, and any employee whose act or omission gave rise to the claim.

These amendments are being made primarily as a result of the NLRB's restructuring in 2013 to create a new Division of Legal Counsel (78 FR 44981 (July 25, 2013)). Claims previously were directed to and determined by the NLRB's Director of Administration, and as a matter of practice, claims filed in the regions were forwarded to headquarters for processing by Administration. As a result of the 2013 reorganization of NLRB functions, the Division of Legal Counsel now handles claims under the FTCA, including determining the claims, and the final rule reflects this change in paragraphs (b) and (d). Paragraph (b) also reflects that claims should be submitted to the NLRB's current headquarters

address, available on its website; the address designated in the current regulations is outdated.

Similarly, financial functions, including payment of FTCA awards, were formerly conducted within the Division of Administration. In 2012, an Office of the Chief Financial Officer was created, with the Chief Financial Officer (CFO) jointly reporting to the General Counsel and the Chairman of the Board (77 FR 43127 (July 23, 2012)). Accordingly, the final rule reflects in paragraph (f) that payments on FTCA administrative claims under \$2,500 are made by the CFO, rather than by the Division of Administration. Payments over that amount continue to be handled in accordance with 28 CFR 14.10.

Paragraph (c) is a new provision for the amendment of claims. It permits amendment at any time prior to the NLRB's determination of a claim, and it provides that an amendment restarts the six-month deadline for responding to the claim. It also provides that the six-month time period prior to which a claimant may not bring a lawsuit against an agency (28 U.S.C. 2675(a)) begins to run at the time of the amendment. While the NLRB has received amendments of claims, its regulations have not previously provided for their treatment.

The elimination of review by "the General Counsel or designee" for claims above \$5,000 in paragraph (e) conforms the proposal with 28 CFR 14.5, which applies to FTCA administrative claims government-wide. That regulation provides that awards in excess of \$5,000 may be made by the head of an agency or his designee "only after review by a legal officer of the agency." Accordingly, this regulation does not require legal review specifically by the General Counsel or a

designee. Consistent with the NLRB restructuring, the Division of Legal Counsel will provide the legal review.

Finally, paragraph (g) sets forth that acceptance of payment constitutes a release of claims against the United States, the NLRB, and any employee whose act or omission gave rise to the claim. This is consistent with 28 U.S.C. 2672 and is included as a new provision to make the consequences of accepting payment clear to any claimants submitting claims to the NLRB.

Accordingly, consistent with the foregoing, the NLRB is amending 29 CFR part 100, subpart D to revise its procedures governing the submission and processing of administrative claims under the FTCA.

This action relates solely to agency organization, management, or personnel matters and will not impose any additional paperwork, reporting, or other costs, burdens, or responsibilities on claimants under the FTCA.

Accordingly, this action is not subject to the advance notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553) or the requirements of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801).

List of Subjects in 29 CFR Part 100

Administrative regulations, Claims under the Federal Tort Claims Act, Cooperation in audits and investigations, Employee personal property loss claims, Employee responsibilities and conduct, Government employees, Nondiscrimination on the basis of handicap in NLRB programs.

For the reasons set forth above, the NLRB amends 29 CFR part 100, subpart D as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 100 continues to read in part as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 141, 156).

* * * * *

Subpart D – Claims Under the Federal Tort Claims Act

2. Revise §100.401 to read as follows:

§100.401 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Scope of regulations.* These regulations apply to administrative claims filed under the Federal Tort Claims Act (28 U.S.C. 2672), as amended, for money damages against the United States for damage to or loss of property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The regulations in this part supplement the Department of Justice's regulations in 28 CFR part 14.

(b) *Filing a claim.* Claims may be submitted to the Associate General Counsel, Division of Legal Counsel, Headquarters, National Labor Relations Board, Washington, DC 20570 at any time within 2 years after such claim has accrued.

The current address for Headquarters can be found at www.nlrb.gov. Such claim may be presented by a person specified in 28 CFR 14.3. An executed Standard Form 95, *Claim for Damage, Injury, or Death*, or written notification must be submitted and accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(c) *Amendment of claim.* A claim submitted in compliance with this subpart may be amended by the claimant at any time prior to final action by the National Labor Relations Board or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the National Labor Relations Board shall have six months to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after filing of an amendment.

(d) *Action on claims.* The Associate General Counsel, Division of Legal Counsel, shall have the power to consider, ascertain, adjust, determine, compromise, or settle any claim submitted in accordance with paragraph (a) of this section. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 1.

(e) *Legal review of claims.* In accordance with 28 CFR 14.5, legal review is required if the amount of a proposed settlement, compromise, or award exceeds \$5,000. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 14.

(f) *Payment of awards.* Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this action will be paid by the Chief Financial Officer out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount greater than \$2,500 will be paid in accordance with 28 CFR 14.10.

(g) *Acceptance of payment constitutes release.* Acceptance by a claimant, his or her agent or legal representative of any award, compromise, or settlement made pursuant to this part shall be final and conclusive on the claimant, his or her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been submitted, and shall constitute a complete release of any claims against the United States, the National Labor Relations Board, and any employee of the government whose act or omission gave rise to the claim.

Dated: March 30, 2016.

By direction of the Board.

William B. Cowen,

Solicitor, National Labor Relations Board.

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